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ABSTRACT

The Supreme Court has consistently defended the power of secondary school officials in their role as enforcer, even in cases of expression. In spite of the trends of the late 1960s and early 1970s and the movement in the schools toward more freedoms for students and a more contemporary curriculum--including journalism as a legitimate high school course--the Court has continued its insistence that the wisdom of professional educators was better than the Court's wisdom. Many concerned with First Amendment rights for secondary school students believed the 1969 decision of "Tinker v. Des Moines Independent School District" was a signal that high school journalists would experience a new-found freedom of expression, free of censorship. However, "Hazelwood School District v. Kuhlmeier" reaffirmed the Court's commitment to the structure of the public school system in the United States, and the authority of its officials. Issues raised in such court cases are school issues more than they are First Amendment issues, and these issues win when pitted against students' First Amendment rights. (Contains 81 notes.) (RS)

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School Order Wins Over First Amendment in Hazelwood

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Abstract

Many concerned with First Amendment rights for secondary school students believed the 1969 decision of Tinker v. Des Moines Independent School District was a signal that high school journalists would experience a new-found freedom of expression, free of censorship. However, Hazelwood School District v. Kuhlmeier reaffirmed the Court's commitment to the stucture of the public school system in the United States, and the authority of its officials. This paper shows that in past cases involving the First Amendment and secondary schools, the Court consistently defended the power of school officials in their role as enforcer, even in cases of expression. These are school issues more than they are First Amendment issues, and these issues win when pitted against students' First Amendment rights.

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School Order Wins Over First Amendment in Hazelwood

In 1974, the Robert F. Kennedy Foundation's Commission of Inquiry into High School Journalism issued its 255-page report, Captive Voices: High School Journalism in America.1 In this report, commission members found that most high school journalism teachers favored censorship, and most practiced it to some extent. The commission found this a frightening fact, and recommended that instead of censorship by school officials, First Amendment rights should be taught and practiced as part of high school journalism courses in the United States. The commission recommended that complete authority and responsibility for the high school press should be given to the student staff. Its tone was optimistic and idyllic. This report, written at the end of the Viet Nam era, and after the Supreme Court decision in Tinker v. Des Moines Independent School District,2 supported students' rights to express political viewpoints in a non-disruptive manner. It seemed to signal that high school journalists might experience a new-found freedom, that their words and the publication of those words might not be censored by their teachers, principals and school boards.

Many appeared, then, to be surprised and outraged3 when, in 1988, the Supreme Court of the United States ruled in a 5-3 decision in favor of allowing school officials to

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censor a high school publication, The Spectrum. In Hazelwood School District v. Kuhlmeier,4 the Court ruled that the school did not have to permit student speech that was inconsistent with its educational mission, nor was a high school newspaper as part of a school course considered a forum for public expression, as was a newspaper for the general public. Had there been a sudden turn-around in philosophy? No, there had not been. People who study the Court should not have been surprised at the outcome at all, for throughout much of its history, the Court has secured and protected the duties, responsibilities and decisions of those in charge of the United States' public school system.5

Over and over the Court has reaffirmed its commitment to the structure of the educational system in the United States, and has deferred to the judgment of professional educators, believing they best know how to implement steps of the learning process.6 Perhaps people who had assumed that because of the Tinker decision, students' rights to liberties guaranteed in the First Amendment were safe, even for minors in a school system saw Hazelwood as only a First Amendment issue, not as a school issue, too. But the Tinker victory was misinterpreted. It was not an all-out declaration of student empowerment; it said, rather, that students could express political views in a non-disruptive

way.7 More important than the Court's opinion as an indicator of the future of high school expression was the 10-page dissent of Justice Hugo Black, a firm and passionate plea for the rebirth of discipline and respect in the schools during such turbulent times,8 and a call to the Court to remember its support of American public school system.

This paper will focus on cases involving the First Amendment and secondary public schools, and will show that the Court consistently defended the power of school officials in their role as enforcer, even in cases of expression. As a result, in spite of the trends of the late 1960s and early 1970s and the movement in the schools toward more freedoms for students and a more contemporary curriculum -- including journalism as a legitimate high school course -- the Court continued its insistence that the wisdom of professional educators was better than the Court's wisdom, which was out of its domain when it came to decisions involving public school education.9

School Officials' Authority and the Curriculum

The Court has trusted what the school officials believed to be in the best interest of the entire student population. This kind of thinking by the Court prevails.

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In 1968, the Supreme Court was reluctant to interfere with a "lifeless Arkansas Act,"10 which held that a teacher caught teaching evolution and Darwinian Theory would be fired, because of set curriculum. In Epperson v. Arkansas,11 the act was challenged by a teacher whose school district had purchased biology books whose content included a chapter on evolution, and which she was expected to teach. The teacher wanted the statute declared void and asked the state be enjoined from firing her for violating provisions of the statute. One of the reasons this case has important implications for the freedom of the high school journalism issue is that the Court chose to comment on schools' rights to control the education of America's children and to choose their own curriculums -- especially important in view of Hazelwood which involved the school's journalism curriculum.

The Court, once again, reminded those involved that "[c]ourts do not and cannot intervene in the resolution of conflicts which arise in the daily operation of the school systems."12 Giving the school authorities control of public education, the Court repeated its conviction that these officials had power to supervise and regulate day-to-day activities, as long as First Amendment rights were not violated. If "a constitutionally guaranteed freedom might

be at stake, certainly such laws would be examined,"13 and the Court would have to intervene.

Even in a case that appeared to involve a clearly unconstitutional act, however, the Court said it had to exercise "care and restraint" when it was called upon to settle a question as to "the operation of the public school system"14 of the United States. In fact, although it did rule the statute unconstitutional, the Court made every effort to support the school's right to choose the way it educates the nation's youth, especially concerning content and methods of teaching. Justice Black, concurring "but not with reasoning," said: "I cannot agree to thrust the Federal Government's long arm the least bit further into state school curriculums than decision of this particular case requires."15

This case seemed blatantly clear on a constitutional level, and yet the Court felt uncomfortable about infringing on the rights of the public schools. Justice Potter Stewart, concurring in the result, said: "The states are most assuredly free 'to choose their own curriculums for their own schools.'"16 In his concurring remarks, Justice Black reiterated Justice Stewart's position; he did not want the Court "in the unenviable position of violating the principle of leaving the states absolutely free to choose

their own curriculums for their own schools."17 In other words, the Court justices do not claim to be educators; they do not presume to be trained or knowledgeable in the business of primary and secondary public school education. Instead, Justice Black said, "However wise this Court may be or may become hereafter, it is doubtful that, sitting in Washington, it can successfully supervise and censor the curriculum at every public school in every hamlet in the United States. I doubt that our wisdom is so nearly infallible."18

In the years between the Tinker and Hazelwood decisions, the Court ruled on several cases which reinforced its "oft-expressed view that the education of the Nation's youth is primarily the responsibility of ... teachers, and state and local school officials, not of federal judges."19 In Wood v. Strickland,20 a case involving students being expelled for violating a school regulation prohibiting the use of intoxicating beverages at school or during school activities, the Court ruled that the school could regulate itself based on the judgment of its officials. It wrote that public education "relies ... upon the discretion ... of school administrators and school board members," and that it was "not the role of the federal courts to set aside decisions of school administrators" even if the court did

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not understand or agree with those decisions.21 Again, in Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley,22 the Court reassured school districts that it had no business questioning their authority in matters of education. The Court reminded reviewing courts that they had "no invitation to substitute their own notions of sound educational policy for those of the school authorities which they review."23 The Court added that "courts must be careful to avoid imposing their view of preferable educational methods upon the States."24

These ideas become important in Hazelwood, because in that case the Court did not question the curriculum at all, nor the educational intent of the journalism course and the Spectrum as part of that course. It simply remarked that because permission before publication was part of the curriculum, it was valid.25 In the Hazelwood decision, as long as there were "legitimate pedagogical concerns," educators were not violating the First Amendment by "exercising editorial control"26 of school-sponsored activities. As long as there is a valid educational purpose behind it, the Court does not like to interfere with established curriculum; in this case, the purpose was to teach "responsible journalism."27 School officials may set

rules and curriculum for their schools. Again, in Hazelwood, school officials had set the journalism course curriculum at Hazelwood East High School, and they stuck to it.

Challenging Authority/Upholding Discipline

As noted, the 1960s affected the high school population as well as the voting-age population. The core curriculum in public high schools was affected directly by what was happening in the country. Civics, psychology and journalism became mainstream courses at the secondary level. Just as their slightly older young adult counterparts spoke their minds and questioned authority, so did many high school youths. Student concerns came in many forms, and often challenged long-standing school rules. One way to study the Court's approach to secondary schools during this period is to examine how it ruled in cases which focused on contemporary concerns as they pertained to the public schools, and the unwillingness of the Court to bend to the demands of students who asked questions which indicated that challenge.

Many of the cases involving the high schools, litigated in the late 1960s and early 1970s, involved students trying to do things a new way or attempting to express themselves by either mimicking their parents' protests or by demanding

forums for their own expressions. Usually the public school system, which was having enough trouble maintaining order in the schools during those turbulent years, found the students' expression or means of expression inappropriate to the public school setting, as defined in written codes and regulations composed decades earlier. Generally, while balancing the issue of First Amendment guarantees with the issue of the school officials' rights to maintain discipline and order in the educational process, discipline won. In Tinker, Justice John Harlan wrote that even though the majority ruled in favor of the students' rights to personal expression, he was "reluctant to believe that there [was] any disagreement between the majority and [himself] on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions."28

In Burnside v. Byars,29 a case often cited alongside Tinker,30 students were expelled for wearing "Freedom" buttons when they were told by school officials not to. While the Court of Appeals ruled in favor of the students, it reiterated its pledge of support for school authority. In its opinion, the court focused on two philosophies: the necessity of rules and regulations to an educational system, and the fact that in the court's delicate search for a

balance between the First Amendment guarantees and the system of public education in the United States, authorities are given every benefit of the doubt.

The system of public education in the United States, the Court of Appeals stated, "requires the formulation of rules and regulations necessary for the maintenance of an orderly program of classroom learning. In formulating regulations, including those pertaining to the discipline of school children, school officials have a wide latitude of discretion."31 The court wrote that it "support[ed] all efforts made by the school to fashion reasonable regulations for the conduct of their students and enforcement of the punishment incurred when such regulations are violated."32 In other words, the court understood, as it always had, the importance of maintaining discipline and order if the objectives of the school were to be achieved. Learning progressed best in an environment suitable for learning, and in order to create and maintain such an environment for the benefit of all who attend, the school must set guidelines for proper school conduct.

The Court of Appeals recognized that the rules must be reasonable, and it defined a reasonable regulation as "one which measurably contributes to the maintenance of order and decorum within the educational system."33 The court

reasoned: "Regulations which are essential in maintaining order and discipline on school property are reasonable."34 This broad definition stated the court system's long-time view on the subject: School officials must do what they need to in order to run their programs efficiently and successfully, and authorities know best what that is, to have orderly and disciplined schools. Indeed, the court applied that approach to its decisions: "Obedience to duly constituted authority is a valuable tool, and respect for those in authority must be instilled in our young people."35 The Supreme Court in Hazelwood supported this decision when it cited New Jersey v. T.L.O.,36 whose ruling commented on the "preservation of order and a proper educational environment," and the "interest of teachers and administrators in maintaining discipline in the classroom and on school grounds."37

The second point the Court of Appeals made in Burnside was that the balancing of First Amendment guarantees for all citizens with the state's duty "to further and protect the public school system,"38 generally seems to favor the side of the school authorities. If speech harms or disrupts the educational process in any way, it can be restrained. The court stated: "Liberty of expression guaranteed by the First Amendment can be abridged by state officials if their

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protection of legitimate state interests necessitates an invasion of free speech."39 This kind of statement leaves room for the judges to make rulings which protect school districts from unruly or undisciplined students, even if such a decision might violate students' First Amendment rights. In another First Amendment case cited in Hazelwood,40 the ruling was in favor of the students' distribution of their underground newspaper, Awakening, off school grounds, but in this case, Shanley v. Northeast Independent School District, Bexar County, Texas,41 88 it stressed that the distribution was done peacefully, and seemed to cause no disruption to the learning environment. If the distribution had been disruptive, the Court of Appeals might have ruled differently; as "[d]isruption ... is an important element for evaluating the reasonableness of a regulation screening or punishing student expression."42

In Burnside, Tinker, Shanley and New Jersey v. T.L.O., discipline, or fear of lack of it, led school officials to restrain particular activities. While the decisions may not directly have affected the way the Court decided Hazelwood, the tone and strength of the language in the opinions concerning the way public schools should be run, concerning their missions and objectives, laid a contemporary foundation for administrative authority to use its power to

look out for its students, to teach them right from wrong, and to help make them responsible and productive. Learning to obey rules and to follow orders set by the schools were ways students could become such citizens.

In no place is this attitude seen so vividly as in Justice Black's 10-page dissent in Tinker, in which he bemoaned the decision and its implications. He speculated that students might use the ruling as a kind of permission to create chaos in the schools. In a furious denouncment of the ruling, Justice Black said it would signal to students that to "defy their teachers"43 was acceptable. How would teachers be able to maintain order if the High Court said such defiance was within students' rights? He argued that "if the time has come when pupils ... can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary."44 He viewed order and discipline in the schools as "as integral and important part of training ... children to be good citizens--to be better citizens."45 Justice Black feared lack of order in the schools, and lack of respect for teachers, similar to the lack of both in other parts of society during that era.

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Liberties Not Guaranteed

Another concern of Justice Black in Tinker was that students were simply not old enough to take on the responsibilities which accompany the rights of the First Amendment. In Tinker, the Court ruled that students wearing armbands to peacefully protest could not be denied their form of expression by officials of the state, according to the constitution. This implied that students had First Amendment rights; however, that was not altogether true. Justice Black wrote that "[t]he original idea of schools ... was that children had not yet reached the point of experience and wisdom."46 His idea of the relation between school and student was that students were in school to learn, and their role was that of subordinate; they were in school to learn from teachers' knowledge and judgment. They were not being "sent to the schools at public expenses to educate and inform the public."47 Justice Black's school was not a free learning environment, but rather a disciplined, orderly place of learning, where pupils are given "an opportunity to learn, not to talk politics by actual speech, or by 'symbolic speech.'"48

In his concurring remarks in Tinker, Justice Stewart restated his opinion from Ginsberg v. New York,49 that "a child ... is not possessed of that full capacity for

individual choice which is the presupposition of First Amendment guarantees."50 Students and teachers did not "take with them into the 'schoolhouse gate' constitutional rights to 'freedom of speech or expression.'"51 Indeed, this seems true. In Shanley, students could distribute their own newspaper, The Awakening, off school property; however, the decision stressed that First Amendment guarantees do not always apply to high school students. The court did "not here delimit the categories of materials for which a high school administration may exercise a reasonable prior restraint of content to only those materials obscene, libelous, or inflammatory, for [the court] realize[s] that specific problems will require individual and specific judgments."52

In Bethal School District No. 403 v. Fraser,53, a case involving a sexually explicit student government nominating speech which caused disruption in the school, the Court cited New Jersey v. T.L.O., in which the Court "reaffirmed that constitutional rights of students are not automatically coextensive with the rights of adults in other settings."54 Students under the age of adulthood must follow many rules, including attending school and being under the supervision of parents or guardians,55 and they are not always granted the same freedoms to which adult citizens are entitled.

Freedom of expression in the public schools seems to be one such questionable freedom. Again, citing New Jersey v. T.L.O. in Hazelwood,56 the Court declared that students may not have the same First Amendment rights as adult citizens. In that case, the Court ruled that searching a student's locker did not violate his constitutional rights because students in public schools do not have the same rights as adults have. Justice Lewis Powell, in his concurring opinion, restated this idea:

> The primary duty of school officials and teachers, as the Court states, is the education and training of young people. ... Without first establishing discipline and maintaining order, teachers cannot begin to educate their students .... For me, it would be unreasonable and at odds with history to argue that the full panoply of constitutional rules applies with the same force and effect in the school house as it does in the enforcement of criminal laws.57

512

With these cases as precedents, the Hazelwood ruling should not have been surprising. When the First Amendment rights of students are balanced against the authority and wisdom of school officials, the school officials usually win.

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Freedom of Expression not Absolute

The subjects of the censored Spectrum articles in the Hazelwood case were student pregnancy and the effects of divorce on children. The school principal disapproved of these articles not only because their sensitive nature might be "inappropriate for some of the younger readers,"58 but because "the pregnant students' anonymity would be lost and their privacy invaded."59 This was not the first time the Supreme Court had ruled that there were no absolute freedoms of expression for students. Justice Black, in Tinker, voiced his disagreement with the assumptions of absolute guarantees of expression: "It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases,"60 teachers and students, of course, included. The Hazelwood ruling seemed to affirm that idea. Although Tinker concerned armbands and students' rights to express themselves symbolically, the language of the ruling and the opinions of many expression cases was broad enough to be applied to other forms of expressions, including student newspapers.

Perhaps the Tinker ruling could have been interpreted as extending to all student media. However, the Court showed on other occasions that expressions, such as the ones ruled on in Burnside, Tinker and Shanley, could be personal

in nature and, while being possible disruptions for the school, they could only affect those directly involved. In Bethel, the Court struck down the assumption that the Tinker ruling applied to every form of expression. It found that an armband, with no vocals, was quite different from the "lewd and obscene speech"61 as evidence in its case. In differentiating the Tinker decision from its Bethel judgment further, the Court pointed out that there was no political viewpoint involved in the Bethel case; in student press cases there rarely is.

These kinds of personal expressions stiffled by the court system were in no way similar to the expression in Hazelwood, which involved details about the lives of private citizens revealed through the school newspaper, which would be seen by students, by students' parents and by the community. Both Justice Harlan and Justice Black, in their Tinker dissents, stressed that the schools should have the authority to regulate the expression permitted in their schools. Justice Harlan reminded the Court that the school is given wide latitude because it acts in good faith and in the best interest of the students. Justice Black said the Court should allow each state's "educational institutions ... the right to determine for themselves to what extent free expression should be allowed in its schools."62 6

The School-Student Press Relationship in Recent Decades

Student press cases in the late 1970s provided decisions on aspects of the relationship between the student press and administrators, aspects which later appeared in Hazelwood. For example, one indicator used in determining the control school officials could exert over their student press was how a student newspaper was produced, and whether or not it was a public forum. The Court in Hazelwood relied on the standard set in Perry Education Association v. Perry Local Educators' Association rather than on its decision in Tinker63. The Perry ruling concluded that just because something is government property does not mean that it is a public forum.64

Later in that decade, the Court in Hazelwood, following the logic of the Perry ruling, noted the fact that the newspaper was part of a class in journalism as structured through an administratively approved curriculum. One objective as stated in the school's curriculum guide was to teach "'the legal, moral, and ethical restrictions imposed upon journalists within the school community.'"65 The Court then applied that idea to the Spectrum, along with the idea from Perry, that the newspaper was not a public forum, and indicated that "school officials were entitled to regulate the contents of Spectrum in any reasonable manner"66. It

was a classroom assignment, not a legitimate public forum; it was only a forum for "a supervised learning experience for journalism students."[67] The principal and other school officials at Hazelwood East, as administrators of a school curriculum, were within their jurisdiction to review the publication. In fact, school officials were afforded "greater control ... to assure that participants learn whatever lessons the activity is designed to teach."[68] The pedagogical intent was kept on track.

School as Protector

One role of school administrators is that of protector. Within the safe and structured environment of the school building, students are protected from the outside world until the schools deem they have learned enough to function as adults. In Hazelwood, the Court cited cases in which courts had decided in favor of school officials' acting in students' best interests. Often schools warn pupils of society's dangers, and try to protect them, while they are at impressionable ages, from those dangers. For example, in Frasca v. Andrews,[69] a case cited in Hazelwood,[70] copies of the final issue of the school newspaper, The Chieftain, were seized by the principal because one letter was misleading and perhaps false, and another would not permit a response from its victim. In its opinion, the Court of Appeals

stated that what was "significant here [was] the educational function,"71 which outweighs even the First Amendment; "[p]art of the educational process is to learn in a protected environment where one's mistakes do not have damaging or irrevocable consequences."72 After all, it was not the real world; it was school.

Schools often see as part of their mission teaching students to deal, on a mature level, with ethical and moral situations. The court, in Frasca, trusted the "professionals having experience with students of comparable age and maturity."73 In another case cited in Hazelwood,74 Trachtman v. Anker,75 the staff of the Voice, a high school newspaper, wanted to use student responses to a questionnaire on the subject of sex. The Court of Appeals found enough reason to believe that distribution of such a survey would result in emotional harm to some students, particularly 14- and 15-year-old students. In effect, if school officials felt students might be harmed, they had a right to prohibit the action. The court found that school officials' "action [in Trachtman was] not so much a curtailment of First Amendment rights; it [was] principally a measure to protect the student commited to their care."76 The emotional maturity of the students came into play in Shanley,77 also. In Shanley, school officials could not

restrain the distribution of school newspapers containing information about birth control and marijuana. In Trachtman, the situation was a bit different because school students were research subjects,78 but nevertheless, the court ruled the same way. In Hazelwood, the Supreme Court ruled similarly, and noted that as the school must set high standards for what kind of news is published, it must also adjust those high standards for "the emotional maturity of the intended audience."79

While many proponents of First Amendment rights for student journalists held the Tinker decision and trends in journalism education in the late 1960s and early 1970s as signs that the student press had the same First Amendment guarantees as the country's media, that perhaps was not what the Courts intended. Fair expression as a right might be a better term than free expression as a right, especially since the Courts continued to contend that the subjects who believed their rights were violated were minors under the supervision of the public school system in the United States. The schools' duty is to teach, and the Courts support the means by which the schools do that at every available opportunity.

Just two years before the Hazelwood decision, the Bethel case was decided. With it came a reaffirmation of the objectives of public school education in the United States, Tinker nearly forgotten. Such things as "consideration of the sensibilities of others" and "society's ... interest in teaching students the boundaries of socially accepted behavior,"80 built into the schools' mission, won when balanced against students' First Amendment rights. These cases were school issues more than they were First Amendment issues. Today, an updated Commission of Inquiry into High School Journalism report would find equally high numbers of teachers who support censorship of their high school newspapers in the name of education, and a few outraged enough over the Hazelwood decision to appeal to their state legislators to provide complete protection for their student journalists.81

Notes

1Commission of Inquiry into High School Journalism. CAPTIVE VOICES: HIGH SCHOOL JOURNALISM IN AMERICA (1974).

2Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

3See, e.g. Patten, (1990). High School Confidential, 29 COLUMBIA JOURNALISM REVIEW 8-10 (1990); Clarke, Constitutional Law: First Amendment Rights: Goodbye to Free Student Press? 42 OKLA. L. R. 101-115 (1989); Goodman, Student Press Freedom: One View of the Hazelwood Decision." 72 NASSP BULLETIN 38-44 (1988).

4Hazelwood School District v. Kuhlmeier, 484 U.S. 260 (1988).

5See, e.g. Libby, The Supreme Court Further Restricts Student First Amendment Rights in Public Schools: The Future of 'Free Trade in Ideas' after Hazelwood School District v. Kuhlmeier, LOY. U. CHI. L.J. 145-170 (1988); Rothauge, Seen but not Heard: In What Forum may High School Students Exercise First Amendment Rights After Hazelwood? WILLIAMETTE L.R. 197-222 (1989); Hengesbach, Prior Restraint Doctrine Finds a Home in America's Public Schools PAC. L.J. 395-422 (1989).

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6See, Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982); Wood v. Strickland, 420 U.S. 308 (1975); Epperson v. Arkansas, 393 U.S. 97 (1968).

7Tinker v. Des Moines at 514.

8Id. at 515-526.

9See, note 6.

10Epperson v. Arkansas, 393 U.S. 97 (1968).

11Id. at 104.

12Id.

13Id. at 104-105.

14Id. at 104.

15Id. at 111.

16Id. at 115.

17Id. at 112.

18Id. at 114.

19484 U.S. 260 at 273.

20Wood v Strickland, 420 U.S. 308 (1974).

21Id. at 326.

22Board of Education of the Hendrick Hudson Central School District, Westchester County v. Rowley, 458 U.S. 176 (1981).

23Id. at 206.

24Id. at 207.

25484 U.S. 260 at 268-269.

26Id. at 273.

27Id. at 269.

28393 U.S. 503 at 526.

29Burnside v. Byars, 363 F.2d 744 (5th Cir. 1966).

30R. Trager. STUDENT PRESS RIGHTS: STRUGGLES IN SCHOLASTIC JOURNALISM (1974).

31363 F.2d 744 at 748.

32Id. at 749.

33Id. at 748.

34Id.

35Id. at 749.

36New Jersey v. T.L.O, 469 U.S. 325 (1985).

37Id. at 339.

38363 F.2d 744 at 745.

39Id.

40484 U.S.260 at 273.

41Shanley v. Northeast Independent School District, Bexar County, Texas, 462 F.2d 960 (CA5 1972).

42Id. at 970.

43Id.Tinker v. Des Moines at 525 (Black, J., dissenting).

44Id. at 518 (Black, J., dissenting).

45Id. at 524 (Black, J., dissenting).

46Id. at 522 (Black, J., dissenting).

47Id.

48Id. at 523-524 (Black, J., dissenting).

49Id. at 515 (quoting Ginsberg v. New York, 390 U.S. 629 (1968)).

50Id. at 521 (quoting Meyer v. Nebraska, 262 U.S. 390 (1923)).

51Shanley v. Northeast at 971.

52Id.

53Bethel School District N. 403 v. Fraser, 478 U.S. 675 (1985).

54Id. at 682.

55Trager, supra note 30.

56484 U.S. 260 at 266.

57469 U.S. 325 at 350.

58484 U.S. 260 at 263.

59Id. at 264.

60Bethel v. Fraser at 680.

61Tinker v. Des Moines at 524 (Black, J., dissenting).

62Perry Education Association v. Perry Local Educators' Association, 460 U.S. 37 (1982).

63484 U.S. 260 at 272.

64460 U.S. 37 at 55.

65484 U.S. 260 at 276.

66Id. at 270.

67Id.

68Id. at 271.

69Frasca v Andrews, 4 Med.L.Rptr. 2174 (1978)

70484 U.S. 260 at 274.

714 Med. L.R. at 2189.

72Id.

73Id. at 2179.

74484 U.S. 260 at 276.

75Trachtman v. Anker, 563 F.2d 512 (CA2 1977), cert. denied, 435 U.S. 925 (1978).

76Id. at 519.

77462 F.2d 960.

78563 F.2d 512 at 516.

79484 U.S. 260 at 272.

80478 U.S. 675 at 681.

81See, e.g. Gersh, Student freedoms protected in Colorado; Governor is expected to sign into law a bill expanding freedom of expression and speech for high school journalists 123 EDITOR & PUBLISHER 15 (1990); Fitzgerald, Bill targets student journalism, COLUMBIA (Mo.) TRIBUNE, Feb. 11, 1993 at 14A.

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